TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 357.

CITY OF LOUISVILLE, APPELLANT,

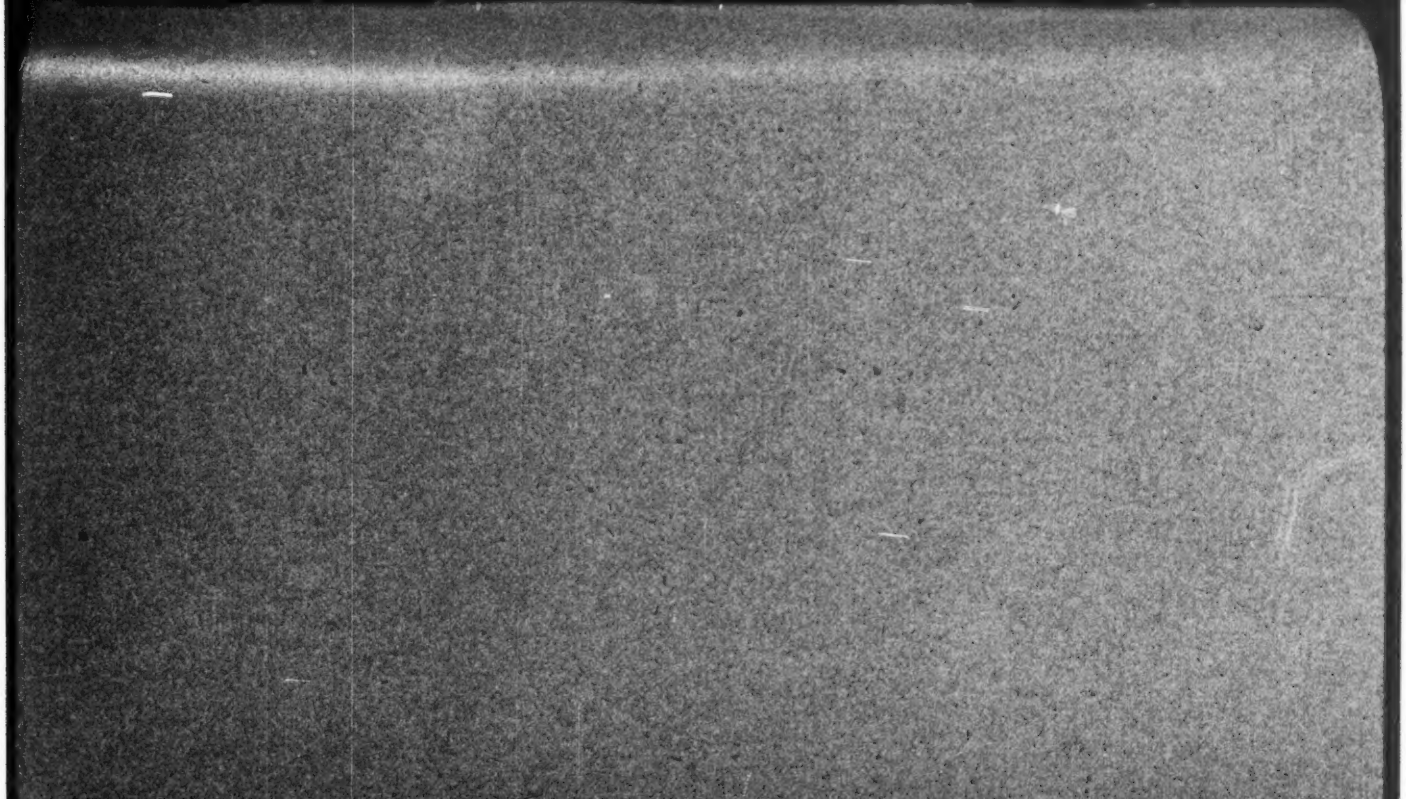
vs.

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK OF KENTUCKY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

FILED AUGUST 15, 1898.

(16,942.)



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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 20, 1898.

1 Proceedings of the circuit court of the United States for the district of Kentucky, at its regular term begun and held at the Federal court hall, in the city of Louisville, on February 21, 1898.

Present: Honorable John M. Harlan, circuit justice; Honorables W. H. Taft and H. H. Lurton, circuit judges.

PRESIDENT, DIRECTORS, AND COMPANY, BANK OF KENTUCKY, Complainant,
versus
CITY OF LOUISVILLE, Defendant. } 6556.

To the judges of the circuit court of the United States for the sixth circuit and district of Kentucky:

The president, directors, and company of the Bank of Kentucky bring this, their bill of complaint, against the City of Louisville; and thereupon the complainant says:

I.

The complainant is a corporation duly created by and organized under the laws of the State of Kentucky, and a citizen of said State.

II.

The defendant, The City of Louisville, is a municipal corporation, duly created by and organized under the laws of the State of Kentucky.

III.

The complainant was created a body politic and corporate by an act of the General Assembly of Kentucky, approved February 2, 1834. By this act it was given full power and authority to
2 acquire, hold, possess, and enjoy all such real estate, goods, effects, and chattels as should be convenient for the transaction of its business, and which might be conveyed to it as surety for any debt. It was directed that it should have and keep its principal office of discount and deposit in the city of Louisville, and that it might have offices of discount and deposit in other parts of the State. Its business was declared to be that of loaning money, discounting promissory notes and bills and dealing in exchange, and it was given authority to issue bills or bank notes, payable to the bearer, on demand, at any of its offices of discount and deposit, but not of less denomination than five dollars. It was given the general powers of a banking corporation. It was provided that it should locate a branch at the seat of government, to aid in the management of the fiscal affairs of the State.

It was provided that the State of Kentucky should subscribe to its capital stock, and that the governor of the Commonwealth should annually nominate, and, with the advice and consent of the senate, appoint three directors on the part of the Commonwealth, who

should hold their office until their successors should be duly appointed and qualified. The said corporation was duly organized under the terms of the said act of incorporation, and its corporate life has ever since continued; and it has performed all of the duties imposed upon it by its acts of incorporation and the amendments thereto, and the laws of the land. It duly established and has ever since maintained a branch at Frankfort, and has fully performed all its duties as fiscal agent of the State.

IV.

By its original charter, which, as aforesaid, was approved February 22, 1834, it was provided that the complainant should continue a body politic and corporate until the 1st day of October, 1864.

By an act of the General Assembly of Kentucky, approved February 15, 1858, it was provided that the charter privileges of the complainant should continue in full force for twenty years from the 1st of October, 1864; but this extension was declared to be subject to certain restrictions, among others (1) that the bank should be subject to all the restrictions, limitations, penalties, conditions, and duties imposed upon it by this act of incorporation and the acts amendatory thereto; (2) that the legislature should at all times have the power to prohibit the issue of bank notes under the denomination of five dollars; and after 1875, of notes under the denomination of ten dollars; (3) that the stockholders should within one year from the 10th of May, 1858, by a vote of a majority given at a stated or called meeting, determine whether they would accept the proposed extension; and the said bank accepting the provisions of the act, was required to notify the governor of the Commonwealth of the acceptance, by the certificate of the president and directors of such bank, and when such notice was thus given, the act was to be considered in full force and effect.

There were other provisions in this act of extension not necessary to be here mentioned, but the complainant fully complied
3 with all of them, and, among other things, complied with the requirement of the acceptance of the act by its stockholders, and of the certificate of the president and directors of such fact.

By another act approved February 1, 1872, it was provided that the complainant was authorized and empowered to purchase from commissioners of the sinking fund, the stock of the bank owned by the State; and that from and after the purchase of this stock the right of the State of Kentucky to appoint and retain directors in said bank should cease.

This stock was purchased as provided in this act.

It was further provided that its charter should be, and thereby was, extended twenty-five years.

The complainant complied with all of the provisions of this act of February 1, 1872, and, so it is, that its charter life will not expire until October 1, 1909.

V.

By the 15th section of its original charter it was provided as follows:

"SECTION 15. It shall be the duty of the cashier of the principal bank, on the 1st day of July, 1836, and on the 1st day of July in each succeeding year, during the continuance of this charter, to pay to the treasurer of this Commonwealth 25 cents on each $100 of stock held and paid for in said bank, which shall be in full of all tax and bonus, provided that the legislature may increase or diminish the same; but at no time shall the tax exceed fifty cents on each $100 of stock paid for in said bank."

By an act approved February 12, 1836, entitled, "An act to increase the revenue," the legislature exercised the right reserved in the above section, and imposed a tax of 50 cents on each share of stock of the complainant—a taxation then largely in excess of the ordinary rate of taxation paid by other moneyed capital or property in the State of Kentucky.

By the act approved February 1, 1872, it was provided that the bank should annually, on the 1st day of January, pay into the treasury, to go into the revenue proper, a tax of 50 cents on each share of $100 of its increased capital stock; which should be in full of all tax and bonus on such increased capital stock.

The complainant says, however, that its stock, as it now exists, is very much less than that originally authorized by its charter. The original amount authorized was $5,000,000, whereas its present capital stock is only $1,650,000.

The complainant paid each year the tax thus levied upon it down to July 1, 1886, from which time it has paid a different amount, as will be hereinafter explained.

VI.

The complainant says that by the settled course of decision of the highest court of this State the meaning of these provisions in its charter has been fixed and determined; that on November 1,
4 1838, it was determined by the court of appeals of Kentucky (which is the highest court of said State) that this language prevented the Commonwealth from taxing the stockholders of the bank, and constituted a contract with the State, which was inviolable, and a limitation on the legislative power to tax the stock of the bank or its property; that by a decision rendered by the said court of appeals on the 24th of November, 1869, it was determined that this language meant to include taxation by any of the municipal subdivisions of the State, and prevented such municipal subdivisions from taxing the real estate of the bank, although situated within their boundaries.

By a decision rendered by the same court on June 5, 1888, it was determined (confirming the judgment of the Franklin circuit court) that the said 15th section as aforesaid constituted a contract between the complainant and the State, by which the State would not tax the complainant at a greater rate than 50 cents on each

$100 of stock; that this included all taxation of all kinds—State, county, and municipal—and upon all kinds of property of the said bank.

VII.

By an act approved May 17, 1886, entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," it was provided that the cashier of all State and national banks should annually, on the 1st day of July of each year, make report of their condition to the auditor, and should pay into the State treasury 75 cents on each share of their capital stock, and should, in addition, pay into said treasury, on their surplus, undivided profits and accumulations in excess of 10 per cent. of their capital stock, a tax at the same rate as the real property should be assessed; and it was distinctly provided by the act that the said taxation should be in full of all tax—State, county, and municipal—except that the real estate and buildings owned and used by the banks in conducting their business should not be exempted from tax for municipal or county purposes; and that such real estate alone might be taxed for county and municipal purposes, as other real estate was taxed. As a condition to its operation upon any of the banks referred to therein, said act, in the fourth section thereof, provided as follows:

"SECTION 4. Each of said banks, institutions, and corporations, by its proper corporate authority, with the consent of a majority in interest of a quorum of its stockholders, at a regular or called meeting thereof, may give its consent to the levying of said tax and agree to pay the same as hereinafter provided, and waive and release all right under the act of Congress or under the charters of the State banks, to a different mode or a smaller rate of taxation, which consent and agreement to and with the State of Kentucky shall be evidenced by writing, under the seal of said bank, and delivered to the governor of the Commonwealth; and said agreement and consent being delivered, and in consideration thereof such bank and its shares of stock shall be exempt from all other taxation whatsoever so long as said taxation shall be paid during the corporate existence of the bank."

5 The consent provided for by this act and the notice to the governor were further required to be given before the next meeting of the General Assembly; provided, the tax should be paid by the bank from the passage of the act.

At a meeting of the stockholders of the complainant on June 25, 1897, a quorum of the stockholders and a majority thereof being present, such stockholders, and a majority in interest thereof, did give their consent to the levying of said tax, and to the waiver and release of all right under its charter to a different mode of and a lower rate of taxation; and said consent of the complainant to the waiver and release aforesaid, and the said agreement, was certified in writing, under the seal of the bank, by the proper corporate authority, to the governor of the Commonwealth, and delivered to him before the next meeting of the General Assembly after the passage of said act. The complainant files herewith as part hereof

a duly certified copy of such resolution, consent and agreement marked "Exhibit —."

VIII.

The complainant, through its cashier, made its report and paid into the State treasury, on July 1, 1886, the full tax required by the act described in the foregoing paragraph, and which is commonly known as the "Hewitt act;" and, in conformity with said Hewitt act, has made its reports in proper form to the auditor of public accounts on the 1st day of July in each and every year up to this time; and, until the year 1893, paid into the State treasury, on or about the 1st day of July of every year from 1886 the full tax required by the said Hewitt act, being 75 cents on each share of its capital stock, and a tax, at the same rate as real property was assessed by the State, upon its surplus, undivided profits, and accumulations in excess of 10 per cent. of its capital stock. These reports continued to be made by the complainant, but on July 1, 1893, the auditor refused to receive the tax under the Hewitt law, although the complainant tendered the same. He refused to receive it on the 1st of July, 1894, although the complainant again tendered the same. The complainant paid the same about the 1st of July, 1895, and on or about the 1st of July, 1896, and in the spring of 1896, at the request of the auditor, and after certain litigation hereinafter mentioned had been determined in its favor, paid to the auditor the difference between the amount paid by it on July 1, 1893, and July 1, 1894, and the amount which it tendered at these times, and which was the amount due under the Hewitt law; so that it is now true that the complainant has every year, down to and including 1885, paid the full tax called for under its charter; and from 1886 to 1896, the full tax called for under the Hewitt law. It has, also, during this period (1886 to 1896) paid in full to the municipalities where its banking-houses are situated, the full county and municipal tax thereon.

The legislature of Kentucky passed an act which went into force on November 11, 1892. The third article of said act dealt with the assessment of certain corporations, among others, banks. By this act it is provided in substance that every incorporated bank
6 shall, in addition to other taxes imposed on it by law, annually pay a tax on its franchise to the State and a local tax thereon to the county, incorporated city, town or taxing district where its franchise may be exercised. The auditor, treasurer, and secretary of state are by said act constituted a board of valuation and assessment for fixing the value of said franchise. It is provided that in order to determine the value of the franchise the banks shall each file reports on or before the 1st day of March in each year, which reports shall be made up to include the 31st day of the preceding December. These reports are to be verified by a chief officer of the bank, and show the following facts: The name and principal place of business of the bank, the amount of capital stock, number of shares, amount of stock paid up, nominal and real value thereof; highest price at which such stock was sold at a

bona fide sale within twelve months next before the 15th day of September of the year in which the statement is required to be made, amount of surplus funds and undivided profits and the value of all other assets; total amount of indebtedness as principal; amount of gross or net earnings or income, including interest on investments, and income from all other sources for twelve months next preceding the 31st day of December of the year in which the statement is required to be made; the amount and kind of tangible property in the State, and where situated, assessed or liable to assessment in the State, and the fair cash value thereof estimated at the price it would bring at a fair voluntary sale, and such other facts as the auditor may require.

Upon this information, and such other information as the board can obtain, it is authorized and directed to fix the value of the capital stock of the bank, and from the amount thus fixed, to deduct the assessed value of all tangible property assessed in the State or in the counties where situated; and the remainder thus found is to be the value of the corporate franchise subject to taxation under the said act.

It is further provided that the said board shall apportion the value of such franchise among the several taxing jurisdictions entitled to a share of such tax.

It is further provided that the auditor of the State, at the expiration of thirty days after the final determination of such values, shall certify to the county clerk of the counties where any portion of the corporate franchise of such banks shall be liable to local taxation, the amount thereof liable for county or State taxes; and such certificate is, by the county clerk, to be filed in his office, and by him certified to the collecting officer of the county and city for collection.

It is further provided that the taxes assessed by the State board of valuation and assessment shall be due and payable on July 1st succeeding such report.

It is further provided that in the event the banks fail to make such report and pay such tax, a penalty of 10 per cent. on the amount of the tax shall attach, and thereafter such tax shall bear interest at the rate of 10 per cent. per annum; and any bank or trust company failing to pay its taxes, penalties, and interest after becoming delinquent, is to be deemed guilty of a misdemeanor, and upon conviction is to be fined for each day it remains unpaid; to be recovered by indictment or civil action, of which the Franklin circuit court shall have jurisdiction.

7 IX.

The complainant further states that the defendant, The City of Louisville, claiming to act under authority given it by the legislature of Kentucky under an act providing for government of cities of the first class (of which the city of Louisville is the only one), passed an ordinance which was approved February, 1894, requiring the banks located in the city of Louisville to pay to said city an an-

nual tax of 4 per cent. upon their gross earnings. The gross earnings of the complainant are about $200,000 annually, so that the said tax would have been $8,000. The complainant failed to pay said tax, and thereupon, under the provision of law, a warrant was sued out against the complainant in the city court of Louisville. The complainant thereupon, in the manner provided by law, filed its petition in the Jefferson circuit court for writ of prohibition against R. H. Thompson, judge of the police court of the city of Louisville, setting out in apt terms its incorporation, its original charter, the extensions thereof, the circumstances of the Hewitt law, the contract entered into in conformity therewith, and claiming the benefit of its said contractual relations with the State, alleged that the said ordinance of the city of Louisville was void as impairing the obligation of the complainant's contract, and any authority given to the city of Louisville to pass such ordinance was likewise void as impairing the obligation of a contract, and asking that the said judge be prohibited from taking jurisdiction under the complaint against the plaintiff for the violation of the said ordinance. Issue was joined on this petition, the defendant being in name The Judge of the Police Court of the City of Louisville, but being in reality The City of Louisville; and the City of Louisville appearing by counsel, the court found the issues in favor of this complainant, and entered a judgment accordingly, establishing the contract of the complainant and its terms and duration.

And thereupon the defendant, The City of Louisville, caused an appeal to be taken from said judgment to the court of appeals of Kentucky, where the cause coming on to be heard, was argued by counsel for the City of Louisville, and for the Commonwealth of Kentucky, both of whom urged that the said contract was not enforceable and had ceased to exist. But the court of appeals, having duly considered the controversy, confirmed the said judgment, and sent its mandate of affirmance to the court of original jurisdiction, where it was duly entered. A duly certified copy of the proceedings in the said cause *are* filed herewith as part hereof, marked "Exhibit E."

X.

The complainant states that the amount of the value of its capital stock, as fixed by the board of valuation and assessment as of December 31, 1892, for taxation for the year 1893, was $2,671,559.58, of which there was apportioned to the city of Louisville $2,476,559.58; that the valuation by the board of valuation and assessment as of December 31, 1893, for taxes for 1894, was substantially the same,
8 the amount apportioned to the city of Louisville being $2,486,351.07; that the tax rate for the city of Louisville for the fiscal year 1893–1894 was $1.88 per cent. on the one hundred dollars; and for the year 1894–1895, $1.88 per cent. on the one hundred dollars; and this amount was in each instance certified by the board of valuation and assessment to the clerk of the Jefferson county court, and has been returned by the said clerk to the collecting officer of the city of Louisville.

The complainant says that the amount of taxes that it would have to pay under these assessments, over and above what it would have to pay under the Hewitt law, would be more than $20,000 per annum.

XI.

Complainant further states that this scheme of taxation violates the contract made between it and the State in its charter and the amendments thereto, and violates the contract made between it and the State under the Hewitt law, and is very largely in excess of the taxation provided for by its charter, or by said Hewitt law, and the act of the legislature of Kentucky instituting such a method of taxation is violative of the Constitution of the United States, and particularly of the clause thereof prohibiting any State from passing a law which shall impair the obligation of a contract, and is void.

XII.

The said method of taxation is also violative of the constitution of the State of Kentucky, in this: that by the said constitution of the State of Kentucky it is expressly provided that the General Assembly shall not impose taxes for the purposes of any county, city, town, or other municipal corporation, but may by general laws confer on the proper authorities thereof respectively the power to assess and collect such taxes; in this, that the said law provided for an assessment of the capital stock of corporations, among others, banks, by a State board of valuation and assessment, and provided for the certification of such value by the State board to the counties and municipalities where any of such capital stock is situated or franchises employed, giving to the said State board the right to apportion the same among the taxing districts, and providing that the corporation shall pay to such taxing districts local taxes thereon; and the said defendant, The City of Louisville, has no power to impose any taxes whatever upon the franchise of the complainant, and has never caused any valuation to be made of the complainant's intangible property or of its franchise.

XIII.

The complainant further states that it having complied with the provisions of the said Hewitt law, under an adjudication of the court of appeals, for both the years hereinbefore mentioned, it is inequitable now to allow the defendant to collect any taxes from it, even though there may be, subsequent to the date of complainant's payments as aforesaid, a change in the ruling in regard to the law of Kentucky on these subjects.

9 XIV.

The complainant further states that the said defendant has power, under its charter, where taxes are due, to cause a warrant to issue and distraint to be made by one of its officers, and under such distraint personal property of the tax-payer to be taken and sold and

processes of garnishment served upon all persons debtors to such tax-payer; and in this way the complainant says that the defendant has power, under the law, to harass and vex the complainant in order to coerce its unjust demands, and to throw into confusion its transactions, and to cast a cloud upon its title to its personal property, and to create great disturbance and confusion in regard to the indebtedness to it of the various persons with whom it has had dealings and to whom it has loaned money.

XV.

The complainant has always been ready to and has always paid all the taxes due by it under the provisions of the Hewitt act; among other things, has paid to the defendant, The City of Louisville, taxes upon the real estate used for its banking purposes, and it will be ready whenever any further taxes become due, to pay the same in accordance with the law.

XVI.

The premises considered, the complainant says that the defendant, The City of Louisville, is threatening to, and, unless restrained by this honorable court, will proceed to endeavor to collect the said taxes for the years 1893 and 1894 under the valuation of the complainant's capital stock made by the State board of valuation and assessment as aforesaid, and will put into operation against the complainant the provisions of law authorizing it to make collections; all of which will be illegal, in violation of complainant's contract, and to the great detriment of the complainant in its property and franchises; and from these threatened wrongs the complainant has no remedy at the common law, and its only remedy is by a bill in equity.

XVII.

The premises considered, complainant prays that the said city of Louisville be perpetually enjoined and restrained from endeavoring to collect any taxes upon the said returns of the board of valuation and assessment as hereinbefore set out, and from taking any proceedings to that end, by way of distraint or bringing suits or otherwise; and that the said complainant be declared as not indebted to the said defendant on account of such taxes; and the complainant prays that its contract may be fully established, and that it be declared that, having conformed to its said contract as hereinbefore set out, by making the payments under the Hewitt law, no other or further taxes can be exacted from it under any form or by any authority.

May it please your honors to grant unto your complainant a writ of subpœna, under proper authority, to be issued against the said City of Louisville, commanding it, under suitable penalty to be therein fixed, and upon a day therein named, to appear and answer to this bill of complaint, but not under oath, answer under oath being waived; and to stand to and abide by all orders

and decrees that the court may enter in the premises; and your orator will ever pray for this and all other appropriate relief.

HUMPHREY & DAVIE,
For Complainant.

STATE OF KENTUCKY, *Jefferson County,* } *sct:*

Oscar Fenley states that he is vice-president of the complainant; that the facts stated herein, so far as they are stated from his personal knowledge are true; and, so far as stated upon information, are by him believed to be true.

OSCAR FENLEY.

Subscribed and sworn to before me this 19th day of April, 1897.
THOMAS SPEED, *Clerk.*

Upon which bill of complaint there issued the following subpœna in chancery:

The President of the United States of America to the City of Louisville, Greeting:

You are hereby commanded to appear before our circuit court of the United States of America, for the district of Kentucky, at the Federal court hall, in the city of Louisville, on the first Monday in June next, to answer a bill in equity exhibited against you in our said court, by the President, Directors and Company of the Bank of Kentucky, which you shall in nowise omit, under the penalty of the law.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, and the seal of our said circuit court hereto affixed, at the clerk's office of said court, in Louisville, this 17th day of April, A. D. 1897, and in the 121st year of our Independence.

Attest: THOS. SPEED, *C. C. C., K. D.*,
By HENRY F. CASSIN, *His Deputy.*

MEMORANDUM.—The defendant is to enter its appearance in the suit in the clerk's office, on or before the 7th day of June next, the day at which the writ is returnable, otherwise the bill may be taken *pro confesso.*

THOS. SPEED, *Clerk,*
By HENRY F. CASSIN, *His Deputy.*

11 Upon which subpœna the marshal made the following return:

Executed April 24th, 1897, on the City of Louisville, by delivering a copy of within spa. in chancery to Geo. D. Todd, mayor of said city.

JAMES BLACKBURN,
United States Marshal,
By R. E. HAINES, *D. M.*

Fees, $2.00.

And on another day of said term of said court, to wit, on the 27th day of May, 1897, came the parties by their counsel and filed their written stipulation herein, which is as follows:

In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

BANK OF KENTUCKY, Complainant,
versus
CITY OF LOUISVILLE, Defendant. } No. 6556. Stipulation.

It is stipulated and agreed that the defendant, City of Louisville, may file a demurrer to the complainant's bill, and an answer at the same time, without waiving the demurrer.

HUMPHREY & DAVIE,
Counsel for Complainant.
H. L. STONE,
Counsel for Defendant City of Louisville.

Came again the defendant and filed its demurrer to the bill of complaint herein.

The demurrer above referred to is as follows:

In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

BANK OF KENTUCKY, Complainant,
versus
CITY OF LOUISVILLE, Defendant. } No. 6556. In Equity.

The Demurrer of The City of Louisville, Defendant, to the Bill of Complaint of Bank of Kentucky, Complainant.

This defendant, by protestation, not confessing any or all of the matters and things in the complainant's bill of complaint contained to be true, in such manner and form as the same *is* therein set forth and alleged, demurs to said bill, and for cause of demurrer, states:

1. That the said bill fails to state facts sufficient to show jurisdiction in this court.

12 2. That the said bill does not contain any matter of equity whereon this court can ground any decree, or give to the complainant any relief against this defendant.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant does demur thereto, and humbly demands the judgment of this court, whether it shall be compelled to make any further or other answer to the said bill; and prays to be hence dismissed with its costs and charges in this behalf most wrongfully sustained.

H. L. STONE,
City Attorney, Solicitor for Defendant, City of Louisville.

I hereby certify, as counsel for the defendant, City of Louisville,

in the foregoing demurrer, that in my opinion the same is well founded in point of law, and proper to be filed.

H. L. STONE,
City Attorney, Solicitor for Defendant, City of Louisville.

STATE OF KENTUCKY, *Jefferson County,* } *sct:*

Personally appeared before me, John F. Groene, a notary public in and for the county and State aforesaid, George D. Todd, who states that he is mayor and chief officer of the defendant, City of Louisville, and the foregoing demurrer is not interposed for delay of the cause in which it is filed.

GEO. D. TODD.

Subscribed and sworn to before me by said George D. Todd, mayor, this 27th day of May, 1897. My commission expires January 23, 1900.

JOHN F. GROENE,
Notary Public, Jefferson County, Kentucky.

Came again the defendant by counsel and filed its answer herein: The answer above referred to is as follows:

In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

BANK OF KENTUCKY, Complainant,
versus
CITY OF LOUISVILLE, Defendant. } No. 6556. In Equity.

The Answer of The City of Louisville, Defendant, to the Bill of Complaint of Bank of Kentucky, Complainant.

This defendant now and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception, which can or may be had, or taken to the many errors, uncertainties, and other imperfections in the said bill contained, for answer thereunto, or to so much and such parts thereof as this defendant is advised
13 it is material or necessary for it to make answer unto, answering, states that the limit on the rate of taxation to be paid to the State, provided for in section fifteen (15) of complainant's original charter, approved February 2, 1834, and that the same should be in full of all tax and bonus, was an immunity from local taxation, which expired with the complainant's original charter life on October 1, 1864, and the amendments to complainant's original charter, approved subsequent to February 14, 1856, whereby extensions of its charter life, and like immunity from local taxation, were granted unto the complainant for twenty and twenty-five years, respectively, came within the purview of the act of the legislature of the State of Kentucky, approved February 14, 1856, and were by the provisions of the last-named act subject to amendment or repeal at the will of the legislature.

This defendant denies that the tax of fifty cents on each share of stock of the complainant was, when fixed by the act of February 12, 1836, referred to in complainant's bill, or at any time since, largely or at all in excess or as much as the ordinary rate of taxation, State and local, paid by other moneyed capital or property in the State of Kentucky.

This defendant denies that by the settled course of decision of the highest court of the State of Kentucky, the meaning of the provisions in complainant's charter, and the amendments thereto, has been fixed and determined, or that by reason thereof the complainant has an inviolable contract with said State, or that said provisions constitute a limitation on the legislative power of said State to provide for the taxation of plaintiff's property by the municipal subdivisions of said State, or that said provisions prevented such municipal subdivisions from taxing the real estate, or other property of the complainant.

This defendant denies that the complainant has since November 11, 1892, paid in full to this defendant the municipal tax on its real estate and other property.

The defendant states section six (6) of article two (2) of said act of May 17, 1886, referred to in complainant's bill, pertaining to the taxation of banks, expressly provided that said act (meaning article two (2) therein, with respect to the taxation of banks), should be subject to the provisions of section eight (8), chapter sixty-eight (68), of the General Statutes, which was as follows:

"All charters and grants of or to corporations, or amendments thereof, enacted or granted since the 14th of February, 1856, and all other statutes, shall be subject to amendment or repeal at the will of the legislature, unless a contrary intent be therein plainly expressed: *Provided*, that whilst privileges and franchises so granted may be changed or repealed, no amendment or repeal shall impair other rights previously vested."

This defendant states that by said section six (6) of article two (2) of the said act of May 17, 1886, the legislature of the State expressed its intention to reserve, and it did in fact reserve, its power to amend or repeal, at the will of the legislature of the State, said act of May 17, 1886, or any part thereof, including the scheme for taxation of banks and the exemption of banks from county and municipal taxation therein provided for, and a contrary intent was not therein plainly expressed.

14 This defendant further states that by section five (5), of article twelve (12), of said act of May 17, 1886, all other acts, general and special, and parts of acts inconsistent therewith, or not in conformity therewith, were repealed.

This defendant denies that the ordinance of 1894, providing for a license tax of four per cent. of the gross receipts or earnings of the banks and trust companies in the city of Louisville, in lieu of an *ad valorem* tax, was adopted under the authority of the statute entitled "An act for the government of cities of the first class," approved July 1, 1893, or in pursuance thereof, although it was

claimed such authority existed under said act when said ordinance was adopted.

This ordinance was held to be in violation of the State constitution and void by the court of appeals of Kentucky, May 5, 1895, in the case of Levi, &c., *v.* City of Louisville, 97 Ky. Rep., 394.

This defendant denies that the defendant in the action of the complainant against R. H. Thompson, judge of the police court of the city of Louisville, was in reality the city of Louisville, or that this defendant appeared in said action by counsel, either in the Jefferson circuit court or in the court of appeals of Kentucky; but it is true the city attorney of this defendant appeared and represented in said action the defendant therein, the said police judge, and also indirectly the commissioners of the sinking fund of the city of Louisville, for whom he was the regularly employed attorney, which was and is a separate and distinct corporation from this defendant, organized and existing under the laws of the State of Kentucky, with power to sue and be sued, contract and be contracted with, and to do and perform all things necessary to execute the duties required and powers given by the act incorporating the same and the amendments thereto, and to which commissioners of the sinking fund the license tax against banks under the ordinance mentioned in the complainant's bill was to be paid.

This defendant states the record in said action will show what questions were submitted to the said circuit court and court of appeals, and what were the issues made by the pleadings and decided by each of said courts, as well as what the contentions of each party were before said courts; and this defendant denies all the statements in complainant's bill inconsistent with said record referred to as "Exhibit E" and made part of the complainant's bill.

This defendant denies that the amount of taxes the complainant would have to pay under the assessments of the State board, over and above what it would have to pay under the Hewitt bill, would be as much or more than $20,000 per annum.

This defendant denies that the scheme of taxation provided for in the general revenue law of November 11, 1892, violates the alleged contract, alleged to have been made between the complainant and the State in its charter and the amendments thereto, or violates the alleged contract, alleged to have been made between it and the State under the Hewitt bill; or that there was any irrepealable contract made between the complainant and the State in the complainant's charter and the amendments thereto, or under the Hewitt bill, or
15 that the act of the legislature of Kentucky, of November 11, 1892, instituting such method of taxation, is violative of the Constitution of the United States, or particularly of the clause thereof prohibiting any State from passing a law which shall impair the obligation of a contract, or that said act is void, or that it is violative of the constitution of the State of Kentucky in that, by the said constitution, it is expressly provided that the General Assembly shall not impose taxes for the purpose of any county, city, town, or other municipal corporation, but may by general laws confer on the proper authorities thereof respectively the power to assess and col-

lect such taxes, or, in that, the said law of November 11, 1892, provides for an assessment of the capital stock of corporations, among others, banks, by a State board of valuation and assessment, and provides for the certification of such value by the State board to the counties and municipalities where any such capital stock is situated or franchises employed giving said State board the right to apportion the same among the taxing districts and providing that the corporation shall pay to such taxing districts, local taxes thereon; or that this defendant has no power to impose any taxes whatever upon the franchise or intangible property of the complainant.

This defendant states that the court of appeals of Kentucky has construed said provision of the constitution of said State, which is section one hundred and eighty-one (181) thereof, as meaning that the General Assembly shall not impose or fix the *amount* or *rate* of taxes for the purposes of any county, city, town, or other municipal corporation, and has further decided, as has the Supreme Court of the United States, that the provisions of said revenue law of November 11, 1892, with respect to the assessment of the franchises or intangible property of corporations, companies, and associations by the State board of valuation and assessment, in the method set forth in the complainant's bill, are not violative of, but in harmony with, the constitution of the State of Kentucky.

This defendant denies that by reason of the complainant's compliance with the provisions of the said Hewitt bill, under an alleged adjudication of the court of appeals for both of the years, or any year mentioned in complainant's bill, it is now inequitable to allow this defendant to collect any taxes from it, even though there may be, subsequent to the date of complainant's alleged payments as aforesaid, a change in the ruling in regard to the law of Kentucky on these subjects.

This defendant denies it has power under the law to harass or vex the complainant in order to coerce any alleged unjust demand or demands, or to throw into confusion complainant's transactions, or to cast a cloud upon its title to its personal property, or to create great or any disturbance or confusion in regard to the indebtedness to it of the various persons, or any person, with whom it has had dealings, or to whom it has loaned money.

This defendant denies that it was at the institution of this action, or is now, threatening to collect the said taxes for the years 1893 and 1894, under the valuation of the complainant's capital stock, or intangible property, made by the State board of valuation and
16 assessment, or will put into operation against the complainant the provisions of the law authorizing it to make collections, or that it will collect, or attempt to collect, from the complainant the taxes aforesaid, or any taxes held to be unlawful by said decision of the court of appeals of June 1, 1895, affirming the judgment of the Jefferson circuit court in said case of The Bank of Kentucky against R. H. Thompson, judge of the police court of the city of Louisville, or under the revenue law of November 11, 1892, so long as said decision shall be not overruled and remain in full force and effect,

or that it has threatened or is threatening to do any illegal act, or act in violation of complainant's alleged contract, or to the great or any detriment of the complainant in its property or franchises, or that complainant has such alleged contract with the State of Kentucky, or that from these alleged threatened wrongs, or any threatened wrong, the complainant has no remedy at the common law, or that its only remedy is by a bill in equity.

This defendant denies it has threatened, or is threatening, the complainant with any wrong or wrongs.

This defendant for further answer and defense to complainant's bill states that the court of appeals of Kentucky, on March 24, 1897, in the case of Deposit Bank of Owensboro *v.* Daviess County, and other bank-tax cases, wherein the same legal questions were involved and issues were made as in the case referred to in the complainant's bill of complaint against R. H. Thompson, judge, etc., rendered a decision in which the former decisions of said court in said case delivered June 1, 1895, and in the cases of Franklin County Court *v.* Deposit Bank of Frankfort, Same *v.* Bank of Kentucky, and other bank-tax cases, decided June 5, 1888, reported in 87 Ky. Rep., 370, were expressly overruled; and said court furthermore decided that no bank, State or national, trust company, or other similar institution, in the State of Kentucky had or was entitled to an irrepealable contract with the State under the provisions of the Hewitt bill, or by reason of its acceptance of or compliance with those provisions, and that the same with respect to all said banks and similar institutions in the State were repealed by the State constitution of September 28, 1891, and the general revenue law of November 11, 1892, and all banks were bound and liable to pay State, county, and municipal taxes, and at the same rate as individuals and other corporations; that the legislature of Kentucky reserved in section six (6), article two (2), of said act of May 17, 1886, the power at will to amend or repeal the scheme of bank taxation provided for in said article of said act, which express reservation of power to amend or repeal formed a part of the contract, if any, between the State and the banks, and other similar institutions, which had accepted the provisions of said act and complied therewith; that the repeal of the Hewitt bill with respect to the method and rate of bank taxation by the State constitution and general revenue law of November 11, 1892, did not impair the obligation of any contract with such banks, but that said repeal was only a legitimate exercise of the reserved power in the legislature to amend or repeal; and that the acts of the legislature, adopted subsequent
17 to February 14, 1856, amending the original charters of the four old banks, originally chartered prior to the last-named date, were grants to said corporations and extensions of the period of their charter existence, within the purview of the statute of February 14, 1856, hereinabove referred to as section eight (8), chapter sixty-eight (68), of the General Statutes of the State of Kentucky, and were all subject to amendment or repeal by and at the will of the legislature.

This defendant states that by the concluding section of said

revenue law of November 11, 1892, all acts or parts of acts in conflict therewith, including the Hewitt bill, with respect to bank taxation were repealed.

This defendant states that said decision of March 24, 1897, by the rules of said court of appeals does not become final until the expiration of thirty days, excluding Sundays, after the date of its rendition, nor until the expiration of such further time as may be given within said period by said court in which to file a petition for a rehearing, nor until such petition for a rehearing is overruled; and this defendant states that, within said period of thirty days, said court gave further time to counsel representing the banks, which were parties in said cases so decided, to wit: sixty days, excluding Sundays, from March 24, 1897, in which to file petitions for a rehearing, some of which have already been filed, and said period of extension has not yet expired, nor has said decision become final.

This defendant, while disavowing any intention or purpose on its part to collect or attempt to collect municipal taxes from the complainant, or any other bank or trust company in the city of Louisville, held to be unlawful by said decision of the court of appeals of Kentucky of June 1, 1895, so long as said decision is not overruled and remains in full force and effect, it avers that should said decision of said court of March 24, 1897, become final and in full force and effect, it will, in that event, as in duty bound, proceed to collect from the complainant and all other banks and trust companies, municipal taxes in accordance therewith, and as authorized by the laws of the State of Kentucky, but not otherwise.

This defendant states that the complainant has not filed its annual report for the years 1895, 1896, and 1897, with the auditor or State board of valuation and assessment, as required by the revenue law of November 11, 1892.

This defendant, therefore, submits that the complainant was not at the institution of this action, and is not now, being subjected to any false or illegal claim or claims, nor to any suit or suits, nor will it suffer any irreparable injury, unless an injunction *pendente lite* be granted herein commanding this defendant, its officers and agents, to refrain from endeavoring by distraint, suit, or otherwise, from collecting or attempting to collect any of the taxes on assessments heretofore certified to it, based on the alleged illegal assessment of the franchise of the complainant, until the further order and determination of this court.

This defendant denies that the complainant is entitled to any injunction whatever, or to any other equitable relief in this court.

18 Wherefore, having answered, this defendant prays that the complainant's bill be dismissed, with judgment for its costs, and for all other relief to which it in equity may appear to be entitled.

H. L. STONE,
City Attorney, Solicitor for Defendant, City of Louisville.

STATE OF KENTUCKY, } *sct:*
Jefferson County, }

Personally appeared before me, John F. Groene, a notary public in and for the county and State aforesaid, the affiant, George D. Todd, who states he is the mayor and chief officer of the defendant, City of Louisville, and the facts stated in the foregoing answer so far as stated from his personal knowledge are true, and so far as stated from information, he believes the same to be true.

GEO. D. TODD.

Subscribed and sworn to before me by said George D. Todd, mayor, this 27th day of May, 1897. My commission expires January 23, 1900.

JNO. F. GROENE,
Notary Public, Jefferson Co., Ky.

19 United States Circuit Court for the Sixth Circuit, District of Kentucky, at Louisville.

BANK OF KENTUCKY, Complainant,
versus
CITY OF LOUISVILLE, Defendant.

LOUISVILLE TRUST COMPANY, Complainant,
versus
CITY OF LOUISVILLE, Defendant.

FIDELITY TRUST & SAFETY VAULT CO., Complainant,
versus
CITY OF LOUISVILLE, Defendant.

GERMAN SECURITY BANK, Complainant,
versus
CITY OF LOUISVILLE, Defendant.

CITIZENS' NATIONAL BANK, Complainant,
versus
CITY OF LOUISVILLE, Defendant.

FIRST NATIONAL BANK, Complainant,
versus
CITY OF LOUISVILLE, Defendant.

THIRD NATIONAL BANK, Complainant,
versus
CITY OF LOUISVILLE, Defendant.

FARMERS' & DROVERS' BANK, Complainant,
versus
CITY OF LOUISVILLE, Defendant.

BANK OF COMMERCE, Complainant,
versus
CITY OF LOUISVILLE, Defendant.

LOUISVILLE CITY NATIONAL BANK, Complainant,
versus
CITY OF LOUISVILLE, Defendant.

UNION NATIONAL BANK, Complainant,
versus
CITY OF LOUISVILLE, Defendant.

LOUISVILLE BANKING COMPANY, Complainant,
versus
CITY OF LOUISVILLE, Defendant.

WESTERN BANK, Complainant,
versus
CITY OF LOUISVILLE, Defendant.

BANK OF LOUISVILLE, Complainant,
versus
CITY OF LOUISVILLE, Defendant.

20 This day came the complainants in each of the above-entitled causes, and filed herein notices duly served on the defendant, and moved the court to grant to them severally an injunction, until the further order of the court, enjoining and restraining the defendant, The City of Louisville, from taking any steps for the enforcement of the taxes set forth in the said bill of complaint.

And came the said City of Louisville, by H. L. Stone, its city attorney, and objected to the said motion, and the same coming on to be heard, was submitted, and the court, not being advised, takes time.

And at the same time this cause came on to be heard upon the demurrers, general and special, heretofore filed herein by said City of Louisville; and the same were argued by counsel and submitted to the court, and the court, not being advised, takes time.

WM. H. TAFT,
Circuit Judge.

May 28, 1897.

And on another day of said term of said court, to wit, on the 5th day of June, 1897, came the complainant, by its counsel; came also the defendant, The City of Louisville, by its counsel, and thereupon the said parties filed their written stipulation herein.

The stipulation above referred to is as follows:

Circuit Court of the United States, Sixth Circuit, District of Kentucky.

PRESIDENT, DIRECTORS, AND COMPANY, BANK OF KENTUCKY, Complainant,
versus
CITY OF LOUISVILLE, Defendant.

It is agreed herein that the resolution of acceptance by the stockholders of the Bank of Kentucky of the Hewitt law, and the record

of the case of Bank of Kentucky *v.* R. H. Thompson, each of which is filed as an exhibit to the bill of complaint in the cause pending in this court styled President, Directors, and Company of the Bank of Kentucky *v.* Stone, &c., may be considered and read as if likewise filed in this case.

H. L. STONE, *City Attorney.*
HUMPHREY & DAVIE,
For Complainant.

21 And on July 5th, 1897, came the complainant and filed its replication to the answer of the defendant herein.
Replication above referred to is as follows:

Circuit Court of the United States, Sixth Circuit, District of Kentucky.

PRESIDENT, DIRECTORS, AND COMPANY, BANK OF KENTUCKY, Complainant,
vs.
CITY OF LOUISVILLE, Defendant.

Replication of the Complainant to Answer of the City of Louisville.

This repliant, saving and reserving to itself all advantage of exception to the insufficiencies of the answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HUMPHREY & DAVIE, *For Com.*

And on June 4th, 1898, the following order was entered:
It is ordered by the court that the preliminary injunction heretofore granted in this case be, and the same is hereby, continued until 25th day of June, 1898.

22 And on June 25th, 1898, the following decree was entered:

PRESIDENT, DIRECTORS, & COMPANY, BANK OF KENTUCKY, Complainant,
vs.
CITY OF LOUISVILLE, Defendant.
} Decree.

The court, being advised, filed its opinion herein. It is therefore adjudged, ordered, and decreed as follows:
I. The demurrer of the defendant, The City of Louisville, to the bill of complaint is hereby overruled; to which the said City of Louisville excepts.

II. And thereupon came the complainant, by Humphrey & Davie, counsel, and filed herein its replication to the answer of the City of Louisville, and by consent this cause came on to be heard for final decree. The complainant read upon the hearing its bill of complaint and the following exhibits, which are on file in the case pending in this court styled The President, Directors, and Company of the Bank of Kentucky *vs.* Samuel H. Stone, &c., viz:

Exhibit No. 1, being the record of the proceedings in the case of Bank of Kentucky *vs.* Franklin County Court and J. W. Gaines, sheriff.

Exhibit No. 2, being the record of the proceedings in the case of Bank of Kentucky *vs.* City of Frankfort.

Exhibit No. 3, also called in the bill Exhibit A, being the resolutions of the stockholders of the complainant accepting the Hewitt bill. It is agreed that these resolutions were filed in due time and in accordance with law.

Exhibit No. 4, also called in the bill Exhibit B, being a record of the proceedings in the case of Bank of Kentucky *vs.* Armstrong, sheriff, and the Franklin County Court.

Exhibit No. 5, also called in the bill Exhibit C, being the final judgment of the Franklin circuit court in the last-named cause.

Exhibit No. 6, being the record of the proceedings in the case of Bank of Kentucky *vs.* City of Frankfort.

Exhibit 7, also called in the bill Exhibit D, being the final judgment of the Franklin circuit court entered in pursuance of the mandate of the last-named cause.

23 Exhibit 8, also called in the bill Exhibit E, being the record of the proceedings in the case of Bank of Kentucky *vs.* R. H. Thompson, &c.

The defendant, The City of Louisville, read its answer and the stipulation between the complainant and the defendant, filed herein June 25, 1898, together with the ordinances and special statutes therein mentioned and referred to; and it is now adjudged, ordered, and decreed that the defendant, The City of Louisville, is perpetually enjoined and restrained from proceeding to collect the taxes for the years 1893 and 1894 upon the franchises of the complainant under the act of November 11, 1892.

And it is further adjudged, ordered, and decreed, by reason of the several pleas of *res judicata* relied on by complainant in its bill and as shown by the exhibit therewith, the said complainant has an established contract with the Commonwealth of Kentucky under the provisions of article 2 of the act of the General Assembly of the State of Kentucky entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 17, 1886, and the acceptance of the same by the complainant, the terms of which contract the Commonwealth of Kentucky cannot alter or change without the consent of complainant; that by the terms of said contract the complainant and its shares of stock cannot during its corporate existence be assessed for taxation for State purposes in a different mode or at a greater rate of taxation than as prescribed in said act, and can be assessed for taxation and taxed for county and munici

pal purposes only upon its real estate used by it in conducting its business; that the provisions of the present constitution of the Commonwealth of Kentucky and the act of November 11, 1892, in so far as they are intended to provide or do provide for any assessment or taxation of the complainant's property, rights of property, or franchise or shares of stock, except to the extent and in the manner provided by sections 1, 2, and 3 of article 2 of the said act approved May 17, 1886, and except to assess a tax for county and municipal purposes upon its real estate used in conducting its business, are in violation of and repugnant to the Federal Constitution and void.

It is further adjudged that the complainant recover of the defendant its costs in this action expended; and now comes the defendant and prays an appeal in open court and tenders its assignment of errors; whereupon the court allows the appeal, and orders the assignment of errors to be filed, and fixes the appeal bond herein at one thousand dollars.

24 Stipulation above referred to is as follows:

In the United States Circuit Court for the Sixth Circuit, District of Kentucky.

PRESIDENT, DIRECTORS, AND COMPANY, BANK of Kentucky, Complainant,
vs.
CITY OF LOUISVILLE, &c., Defendants.
} Stipulation. #6555.

It is stipulated and agreed between the complainant and the defendant City of Louisville that the following ordinances of the said city shall be read as evidence in its behalf on the trial of this action, and the same are made part of the record as though copied and fully set out in this stipulation, to wit:

1. An ordinance entitled "An ordinance relating to assessments," approved August 9, 1893 (Second Biennial Compilation of the Ordinances of the City of Louisville, 1897, pp. 219–222).

2. An ordinance entitled "An ordinance concerning the taxes for the fiscal year ending August 31, 1894," approved December 21, 1893 (*ib.*, pp. 250–252).

3. An ordinance entitled "An ordinance concerning certain licenses in the city of Louisville," approved January 29, 1894, being the same ordinance, referred to in complainant's bill, requiring banks to pay to the sinking fund of the city of Louisville an annual license of four per cent. (4 %) on *its* gross earnings, a copy of which ordinance is hereto attached, marked Exhibit "L."

4. An ordinance entitled "An ordinance providing for the retrospective assessment of omitted personal property," approved July 9, 1895 (*ib.*, pp. 204, 205).

5. An ordinance entitled "An ordinance providing for crediting ad valorem tax bills on personalty by the amount paid to
25 the sinking fund as license on same," approved August 6, 1895 (*ib.*, pp. 205, 206).

6. An ordinance entitled "An ordinance concerning taxes for the fiscal year ending August 31, 1894, on all property omitted from an ordinance entitled 'An ordinance concerning the taxes for the fiscal year ending August 31, 1894,' approved December 21, 1893," approved April 9, 1897 (*ib.*, 252–256).

7. An ordinance entitled "An ordinance regulating the duties of the city assessor with respect to tax bills on assessments made by the State railroad commission and State board of valuation and assessment," approved April 9, 1897 (*ib.*, pp. 28, 29).

It is further stipulated and agreed between the complainant and the defendant City of Louisville that the complainant, Bank of Kentucky, did not pay any sum for license under the said license ordinance approved January 29, 1894, but loaned to the commissioners of the sinking fund of the city of Louisville $8,063.48, for which said commissioners executed their note to complainant March 13, 1894, bearing interest at the rate of four per cent. (4 %) per annum; which note said commissioners paid in full to complainant February 21, 1896, with $625.33, accrued interest thereon.

III. It is further stipulated and agreed that the "commissioners of the sinking fund of the city of Louisville" were incorporated and organized and their powers and duties are prescribed and defined by the statutes and ordinances compiled and embraced in
26 chapter XLIII, sections 1 to 49, inclusive, Burnett's Louisville City Code, 1884, pp. 691–705, an act concerning the deposits of the sinking fund of the city of Louisville, approved May 15, 1886 (Session Acts 1885–'6, vol. 2, p. 677), which ordinances and special statutes are made part of the record as though copied and fully set out in this stipulation, and by sections 3010 to 3024, Kentucky Statutes, edition of 1894.

IV. It is further stipulated and agreed that during the time the complainant's action against R. H. Thompson, judge, mentioned in complainant's bill, was pending in the Jefferson circuit court and in the court of appeals of Kentucky on appeal, Hon. Henry S. Barker, who appeared as counsel for the defendant in said action, was the employed attorney of the commissioners of the sinking fund of the city of Louisville on an annual salary, as well as the city attorney of said city.

V. It is further stipulated and agreed that the meeting of the next General Assembly after the passage of the Hewitt act, on May 17, 1886, was required by statute at the latter date to be, and was in fact, on Friday, December 30, 1887.

HUMPHREY & DAVIE,
Solicitors for Complainant, Bank of Kentucky.
HENRY L. STONE,
City Attorney, Solicitor for Defendant City of Louisville.

And on the 25th day of June, 1898, came parties, by counsel, and filed the following agreement:

27 In the Circuit Court of the United States, Sixth Circuit, District of Kentucky.

PRESIDENT, DIRECTORS, & COMPANY, BANK OF KENTUCKY, Complainant,
vs.
CITY OF LOUISVILLE, Defendant.
} Agreement. # 6556.

The defendant, The City of Louisville, having taken an appeal in this case to the Supreme Court of the United States, this agreement is now made to avoid the cost of copying and printing unnecessary parts of the record. It is therefore agreed as follows:

1. The clerk, in making up the record, need not copy any paper in this record which he has already copied in the record of the case of same complainant *vs.* Samuel H. Stone, &c.

2. The two cases presenting questions so similar, it is agreed that either party may refer in this case to the record in the other case to the same effect as if such record was a part of this case.

3. The issue and service of a citation in this case upon appeal is hereby waived.

HUMPHREY & DAVIE,
For Comp't.

H. L. STONE,
City Attorney, for Defendant, City of Louisville.

28 The opinion above referred to is as follows:

Circuit Court of the United States, District of Kentucky.

PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK OF KENTUCKY
vs.
CITY OF LOUISVILLE.
} No. 6556.

Before Harlan, circuit justice, and Taft and Lurton, circuit judges.

TAFT, circuit judge, delivered the opinion of the court:

The bill filed herein presents the same questions as those already considered in the case of the *Bank of Kentucky v. Samuel H. Stone, etc.*, but it relates to the taxes for 1893–'94, which were certified down by the State board of valuation and assessment to the city of Louisville for collection. We do not think that the questions differ in any respect from those already considered, and must, therefore, hold that the city of Louisville is estopped by the former judgment between the Bank of Kentucky and it, in which it was held by the court of appeals of Kentucky that the Bank of Kentucky had an irrevocable contract under the Hewitt act for the exemption of the property and franchise of the Bank of Kentucky from any other taxation than as therein imposed; and, therefore, that the bank is entitled to the preliminary injunction against the collection by the city of Louisville and its agents of the taxes provided in the revenue act of November, 1892.

The demurrer to the bill is overruled, and the motion for an injunction granted.

29 The petition for appeal and assignment of errors above referred to are as follows:

In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

PRESIDENT, DIRECTORS, & COMPANY, BANK OF KENTUCKY, Complainant,
versus
CITY OF LOUISVILLE, Defendant. } No. 6556.

Petition and Assignment of Errors of the City of Louisville.

To the honorable the judges of the United States circuit court for the sixth circuit, district of Kentucky:

Now comes the petitioner and defendant, City of Louisville, and states that the record, proceedings, and decree of the court rendered herein June 25, 1898, contain manifest errors to its prejudice, committed as follows, to wit:

I.

The court erred in overruling and not sustaining each ground of its demurrer to complainant's bill, and in entertaining jurisdiction of this action, and in not decreeing a dismissal of complainant's bill, because it does not contain any matter of equity whereon this court can ground any decree or give to complainant any relief against this defendant.

II.

The court erred in decreeing that complainant has an irrevocable or irrepealable contract during its corporate existence with the State of Kentucky to pay taxes only in accordance with the Hewitt act of May 17, 1886, by reason of its acceptance of the provisions of said act and the former judgment in the action of complainant, Bank of Kentucky, against R. H. Thompson, judge of the police court of the city of Louisville, in the Jefferson circuit court, common pleas division, July 24, 1894,
30 affirmed by the court of appeals of Kentucky June 1, 1895, by which judgment further proceedings were prohibited in the prosecution of the warrant issued against complainant in said police court for carrying on the business of banking without paying the license fee to the sinking fund commissioners of the city of Louisville, in violation of the ordinance of the city of Louisville of January 29, 1894, passed in pursuance of the act of July 1, 1893, for the government of cities of the first class, and in decreeing that the claims and rights of the defendant, City of Louisville, to ad valorem taxes on the assessments of complainant's franchise or intangible property, made for the years 1893 and 1894, by the board of valuation and assessment of the State of Kentucky, under the act of No-

vember 11, 1892, were by the judgment aforesaid *res judicata*, and in decreeing a perpetual injunction against the defendant, City of Louisville, enjoining and restraining it from collecting its taxes on said assessments of the franchise or intangible property of complainant and from taking any steps to collect its said taxes for said years and during the corporate existence of the complainant, as provided by said act of November 11, 1892, and in decreeing that the latter act impaired the obligation of said alleged contract between complainant and the State of Kentucky, and thereby violated and was repugnant to the Constitution of the United States.

Wherefore this petitioner and defendant says the said decree of the court herein is erroneous, and prays this honorable court to grant it an appeal to the Supreme Court of the United States, to the end that said decree may be reversed, and that said errors may be corrected; and so it will ever pray.

HENRY L. STONE,
City Attorney, Solicitor for Defendant, City of Louisville.

31 The appeal bond above referred to is as follows:

Circuit Court of the United States, District of Kentucky.

PRESIDENT, DIRECTORS, & COMPANY, BANK OF KENTUCKY,
vs.
CITY OF LOUISVILLE.

Know all men by these presents that we, The City of Louisville & Fidelity & Deposit Company of Maryland, are held and firmly bound unto the President, Directors, & Company of the Bank of Kentucky in the sum of one thousand dollars, to be paid to the said President, Directors, & Company of the Bank of Kentucky, executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 30th day of June, A. D. 1898.

Whereas the above-named City of Louisville hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the district of Kentucky, at Louisville:

Now, therefore, the condition of this obligation is such that if the above-named City of Louisville shall prosecute its said appeal to effect and answer all costs if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

CITY OF LOUISVILLE, [L. S.]
By H. L. STONE, *City Attorney.* [L. S.]
FIDELITY & DEPOSIT CO.
OF MARYLAND,
By WILLIS S. MULLEN,
Gen'l Ag't & Att'y-in-fact. [L. S.]

Sealed and delivered in presence of—
HENRY F. CASSIN,
Deputy Clerk U. S. Circuit Court.

32 And on the 25th day of June, 1898, came parties by counsel and filed agreement herein.

Agreement above referred to is as follows:

In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

BANK OF KENTUCKY, Complainant,
versus
CITY OF LOUISVILLE, Defendant.
} No. 6556. Agreement.

It is agreed between the complainant and defendant that in copying the record for the Supreme Court of the United States the clerk need not copy the special statutes relating to the commissioners of the sinking fund of the city of Louisville nor the ordinances recited and referred to in the stipulation filed herein and read in evidence by the defendant on the final hearing of this cause, but that counsel for the appellant, City of Louisville, may print such parts of said acts and ordinances as may seem to him relevant in an appendix to his brief, to have the same effect as if copied into the record of the appeal.

HUMPHREY & DAVIE,
Solicitors for Complainant.
HENRY L. STONE,
City Attorney, Solicitor for Defendant, City of Louisville.

33 DISTRICT OF KENTUCKY, *ss:*

I, Thomas Speed, clerk of the circuit court of the United States for the district of Kentucky, at Louisville, do hereby certify that the foregoing 32 pages contain a true and correct transcript of the record in the case mentioned in the caption hereof, in accordance with the stipulation of counsel herein, as the same appears from the files and records in my said office.

Witness my hand and the seal of said circuit court this 4th day of August, A. D. 1898.

[Seal 6th Circuit Court, Ky. Dis., U. S. of America.]

THOS. SPEED, *Clerk.*

Endorsed on cover: Case No. 16,942. Kentucky C. C. U. S. Term No., 357. City of Louisville, appellant, *vs.* The President, Directors, & Company of the Bank of Kentucky. Filed August 15th, 1898.